

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

NEW YORK STATE RESTAURANT  
ASSOCIATION,

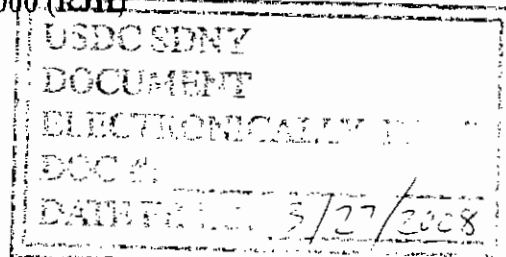
*Plaintiff,*

v.

NEW YORK CITY BOARD OF HEALTH, *ET AL.*,

*Defendants.*

No. 08 Civ. 1000 (RJH)



**STIPULATION AND ORDER**

WHEREAS, Defendant New York City Board of Health promulgated § 81.50 of the New York City Health Code ("Regulation 81.50") on January 22, 2008; and

WHEREAS, Regulation 81.50 has an effective date of March 31, 2008; and

WHEREAS, plaintiff New York State Restaurant Association commenced the above-captioned action on January 31, 2008; and

WHEREAS, on January 31, 2008, plaintiff filed by order to show cause a motion for (i) a preliminary injunction under Rule 65 of the Federal Rules of Civil Procedure, preliminary enjoining and restraining Defendants from enforcing Regulation 81.50 in violation of the First Amendment and Supremacy Clause of the United States Constitution; and (ii) a declaratory judgment under Rule 57 of the Federal Rules of Civil Procedure that Regulation 81.50 is preempted by the Nutritional Labeling and Education Act of 1990, 21 U.S.C. §§ 343, 343-a, and regulations promulgated thereunder by the Food and Drug Administration; and

WHEREAS, Defendants opposed the motion; and

WHEREAS, the Court held a hearing on the motion on February 21, 2008; and

WHEREAS, at the February 21 hearing, counsel for the Defendants advised the Court

that the Defendants would not seek any monetary fines for violation of Regulation 81.50 for a period lasting six weeks from March 31, 2008, the date on which Regulation 81.50 was to become effective; and

WHEREAS, Plaintiff's motion seeks an injunction against any and all enforcement of Regulation 81.50 before it becomes effective, such injunction not being limited to an injunction against monetary fines; and

WHEREAS, the Court has advised the Parties that it does not appear that it will be in a position to rule on the motion prior to March 31, 2008, but expects to be in a position to rule on the motion during the first two weeks of April, 2008;

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED THAT:

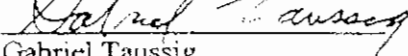
1. All enforcement (including, without limitation, issuing warning letters, notices of violation or violations, making statements on the New York City Department of Health's webpage or elsewhere indicating that restaurants or other entities are not in compliance with Regulation 81.50, or assessing fines or penalties) of Regulation 81.50 shall be stayed until April 14, 2008. Nothing herein shall preclude defendants from publicly expressing their opinions about plaintiff's challenge to Regulation 81.50 so long as their public statements do not indicate that restaurants or other entities are not in compliance with the regulation.

2. Defendants may not seek any monetary fines for violation of Regulation 81.50 until Tuesday, May 27, 2008.

3. This stipulation is without prejudice to the Plaintiff's right to seek further relief with respect to the period after April 14, 2008, or the Court's decision on the pending motions, whichever comes earlier, and Defendants' right to oppose such relief.

Dated: March 26, 2008  
New York, New York

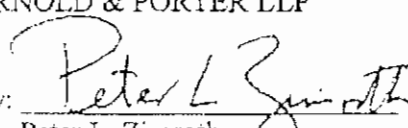
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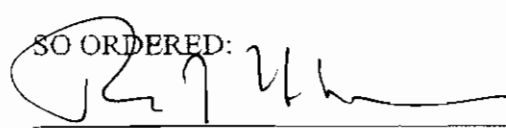
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*Counsel for Plaintiff,  
New York State Restaurant Association*

SO ORDERED:

  
The Honorable Richard J. Holwell  
United States District Judge

3/27/08